

Item SP06-19 Response Form

Title: Electronic Generation of Court Orders in Juvenile Court Proceedings and Proceedings Under the Probate Code (amend Cal. Rules of Court, rules 1.31 and 5.504 and adopt rule 7.101.5)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Monday, October 9, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee
All comments will become part of the public record of the council's action.*

Title	Electronic Generation of Court Orders in Juvenile Court Proceedings and Proceedings Under the Probate Code (amend Cal. Rules of Court, rules 1.31 and 5.504 and adopt rule 7.101.5). ¹
Summary	Rule 5.504(c) of the California Rules of Court would be amended to authorize juvenile courts to generate modified Judicial Council mandatory form court orders in proceedings under the Welfare and Institutions Code. Proposed new rule 7.101.5 would authorize courts using the California Case Management System to generate modified Judicial Council mandatory form orders in proceedings under the Probate Code. Rule 1.31(e) would be amended to identify the amended juvenile court rule and the new probate rule as exceptions to that rule's prohibition of court-altered mandatory Judicial Council forms.
Source	Family and Juvenile Law Advisory Committee. Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs; and Probate and Mental Health Advisory Committee, Hon Don E. Green, Chair
Staff	Family and Juvenile Law Advisory Committee: Melissa Ardaiz 415-865-7567 melissa.ardaiz@jud.ca.gov Probate and Mental Health Advisory Committee: Douglas C. Miller (415) 865-7535 douglas.miller@jud.ca.gov

¹ On June 30, 2006, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration effective January 1, 2007. Under the reorganization, rule 201.1(b) has been renumbered as rule 1.31 in reorganized title 1 of the rules of court, *Rules Applicable to All Courts*. Thus the proposed amendment of rule 201.1(b)(5) is shown throughout this proposal as an amendment to rule 1.31(e), which will become effective January 1, 2007. Under the reorganization, rule 1402 has been renumbered as rule 5.504 in reorganized title 5 of the rules of court, *Family and Juvenile Rules*. Thus the proposed amendment of rule 1402 is shown throughout this proposal as an amendment to rule 5.504, which will become effective January 1, 2007. Any amendments approved as part of this proposal will be incorporated into the text of the rules that go into effect on January 1, 2007.

Under the reorganization, rules governing proceedings under the Probate Code will remain in title 7 of the rules of court, *Probate Rules*. The rules in title 7 will retain their current numbering. The proposed new rule 7.101.5 would therefore immediately follow existing rule 7.101 and precede existing rule 7.102, in chapter 3 of title 7, *Pleadings*.

Discussion

Historically, court operation practices and case management systems have differed from one court to another. The California Case Management System (CCMS) is a statewide software application currently under development which, once completed and placed in operation, will allow trial courts to manage all case types in a uniform manner throughout the state. Full implementation of CCMS is expected to occur by 2012.

Development and implementation of CCMS is going forward in stages. The first courts to start operations in CCMS in proceedings under the Probate Code are expected to do so in late 2006 or early 2007. Case management of juvenile court proceedings in CCMS is currently in the design and development stage. Courts are not expected to begin phasing in juvenile court operations in their CCMS applications until approximately 2010.

Rule 1.31(a) (current rule 201.1(b)(1)) of the California Rules of Court requires that parties must use mandatory forms adopted by the Judicial Council, and courts must accept them for filing. Rule 1.31(e) (current rule 201.1(b)(5)) prohibits courts from altering Judicial Council forms and requiring the use of the altered forms.

Rule 5.504

The Family and Juvenile Law Advisory Committee proposes rule amendments to provide juvenile courts greater flexibility than contemplated in rule 1.31 to incorporate mandatory Judicial Council form orders into their case management systems.

Effective January 1, 2006, the Judicial Council adopted or revised a large number of juvenile court forms, including new mandatory form orders. Courts subsequently contacted AOC staff with questions on how to adapt their current case management systems to incorporate the mandatory form orders given varying local practices for court orders, such as the use of computer-case management systems, no carbon required (NCR) paper, or other paper-based systems. Some courts expressed particular concern with the need to alter current case management systems given the pending implementation of CCMS and were concerned about how incorporating the juvenile court order forms in the mandated format would affect county costs and the workload of staff.

In adopting and revising the mandatory juvenile court order forms, the Judicial Council's goal was to create uniformity among counties and

address long standing problems with juvenile case transfer protocols that were created by inconsistent local forms. However, county concerns indicate that greater variance is needed to assist counties during the period of transition leading to full implementation of CCMS. To accommodate court implementation of mandatory juvenile court Judicial Council forms during this time, the Family and Juvenile Law Advisory Committee recommends amending rule 5.504 to allow for flexibility in the form and format of mandatory juvenile court orders. Amended rule 5.504 would incorporate the provisions of rule 1.31 (current rule 201.1(b)), and would specify additional requirements for legal forms applicable to the juvenile court.

This rule amendment would permit juvenile courts to produce a modified Judicial Council court order form despite its mandatory nature if the modification is “substantively identical” to the provisions of the mandatory Judicial Council form it is replacing, both in numerical organization and language. This resolution balances our goals of both providing flexibility to the courts and establishing uniformity among counties in mandatory form orders.

This proposal would be an interim measure until CCMS is implemented for juvenile court proceedings. Upon completion of CCMS, county case management systems will be programmed to generate mandatory Judicial Council court orders, and the amendment proposed here would sunset.

Rule 7.101.5

Many court orders filed in probate proceedings are mandatory Judicial Council forms. These forms feature findings and orders and requests for information that are selected by checking accompanying checkboxes, leaving unselected items in the form but deemed not to be in the order signed by the judicial officer. As noted above, rule 1.31(e) of the reorganized rules of court prohibits courts from altering mandatory forms.

The CCMS application now coming online for probate matters will not produce a Judicial Council form order by checking checkboxes. Instead, the various possible statements that are intended to become part of the order must be reduced to input codes, or instructions to include the desired statements in the order being prepared. An order prepared by a court using CCMS would thus contain only the parts of the form order selected for inclusion: That is, only the parts now selected by checking a checkbox in the form. The unchecked parts of

the form would be omitted from the document.

A mandatory Judicial Council form order prepared as required by the CCMS would be an altered form within the meaning of rule 1.31(e). If courts are going to be able to fully utilize the CCMS application, this rule must be modified or made the subject of an exception for court-prepared orders.

Probate orders have generally been prepared by the parties' attorneys and submitted to the court. In recent years, however, the number and percentage of unrepresented persons in probate proceedings have significantly increased, particularly in guardianship and conservatorship proceedings. Courts are facing more continuances or other delays because of the failure of many unrepresented parties to timely and properly prepare proposed orders. This means increased court staff time and expense, and frustrating delays for parties and other persons interested in the proceedings.

Some courts that will soon begin probate department operations under CCMS have asked for permission to modify Judicial Council form probate orders by preparing them in the CCMS application instead of relying on party-prepared orders. The Probate and Mental Health Advisory Committee proposes to authorize these courts to prepare most of the Judicial Council form probate orders, and all of the most important orders.²

Proposed new rule 7.101.5(a) lists the Judicial Council mandatory probate orders to which it would apply. Rule 7.101.5(b) would define orders prepared under CCMS as "electronically generated" orders. This phrase is modeled after former rule 981.5, repealed by its terms in 2003. Rule 981.5 authorized courts participating in pilot projects for electronic filing and forms generation to modify Judicial Council

² Only three Judicial Council mandatory form probate orders would not be eligible for court preparation under the CCMS in this proposal because they are not listed in proposed rule 7.101.5(a). All are routine ex parte orders, easily filled out by the applicants for the orders, submitted at the time of the application, and often signed by the judicial officer at that time. All of these orders are combined with their petitions or applications; there is no need for a separate order prepared by the court. The three forms are: *Ex Parte Petition for Authority to Sell Securities and Order* (form DE-270/GC-070); *Ex Parte Petition for Approval of Sale of Personal Property and Order* (form DE-275/GC-075); and *Ex Parte Petition for Final Discharge and Order* (form DE-295/GC-395).

forms.³

Rule 7.101.5(d) would require courts electing to generate all or some of their own Judicial Council form probate orders to notify the Probate and Mental Health Advisory Committee and the Court Technology Advisory Committee of their election. This provision is also modeled after former rule 981.5, which imposed a similar duty to notify and provide requested information to the Court Technology Advisory Committee.

Rule 7.101.5(e) would provide a sunset date of January 1, 2012 for the rule unless the rule is amended or reenacted after its effective date to provide otherwise. The five-year window should give the courts and the Judicial Council enough time to assess whether electronically generated Judicial Council probate orders are appropriate, and perhaps should be extended to other types of orders, as the CCMS matures.

The advisory committee invites comments from interested persons concerning the costs, including staff training costs, and other difficulties anticipated from the electronic generation of orders under this proposal.

Rule 1.31(e)

Rule 1.31(e) (current rule 201.1(b)(5)) would be amended to refer to amended rule 5.504 and new rule 7.101.5 as exceptions to the provisions of that rule barring the alteration of mandatory Judicial Council forms.

Attachment

³ See rule 2.261 of the reorganized California Rules of Court (current rule 2061). Rule 2.261 continues the authorization for participating courts to modify Judicial Council forms that had been granted by repealed rule 981.5.

Rule Proposal

Rules 1.31 and 5.504 of the California Rules of Court would be amended and rule 7.101.5 would be adopted, effective January 1, 2007, to read:

Rule 1.31.¹ Mandatory forms

(a) Use of mandatory forms and acceptance for filing

Forms adopted by the Judicial Council for mandatory use are forms prescribed under Government Code section 68511. Wherever applicable, they must be used by all parties and must be accepted for filing by all courts. In some areas, alternative mandatory forms have been adopted.

(b) List of mandatory forms

Each mandatory Judicial Council form is identified as mandatory by an asterisk (*) on the list of Judicial Council forms in Appendix A to the California Rules of Court. The list is available on the California Courts Web site at www.courtinfo.ca.gov/forms.

(c) Identification of mandatory forms

Forms adopted by the Judicial Council for mandatory use bear the words “Form Adopted for Mandatory Use,” “Mandatory Form,” or “Form Adopted for Alternative Mandatory Use” in the lower left corner of the first page.

(d) Words on forms

Publishers and courts reprinting a mandatory Judicial Council form in effect before July 1, 1999, must add the words “Mandatory Form” to the bottom of the first page.

(e) No alteration of forms

Except as provided in rule 5.504, concerning court orders in juvenile court proceedings, and rule 7.101.5, concerning court orders in proceedings under the Probate Code, courts may not alter a mandatory Judicial Council form and require the altered form’s use in place of the Judicial Council form.

¹ The recommended amendments of rule 1.31 and rule 5.504 are to the version of these rules adopted by the Judicial Council on June 30, 2006 and reflect the text of these rules that will be in effect on January 1, 2007. Any further amendment of these rules adopted as part of this proposal will be incorporated into the text of the rule that goes into effect on January 1, 2007.

1
2 **(f) No colored forms**

3
4 Courts may not require that any mandatory Judicial Council form be
5 submitted on any color of paper other than white.
6

7 **(g) Orders not on mandatory forms**
8

9 An otherwise legally sufficient court order for which there is a mandatory
10 Judicial Council form is not invalid or unenforceable because the order is not
11 prepared on a Judicial Council form or the correct Judicial Council form.
12

13 **Rule 5.504. Judicial Council forms**
14

15 **(a) Explanation of Judicial Council legal forms**
16

17 Rules 1.30–1.37 and 2.131–2.134 apply to Judicial Council legal forms,
18 including forms applicable to the juvenile court.
19

20 **(b) Electronically produced forms**
21

22 The forms applicable to juvenile court may be produced entirely by
23 computer, word-processor printer, or similar process, or may be produced by
24 the California State Department of Social Services Child Welfare Systems
25 Case Management System.
26

27 **(c) Implementation of new and revised mandatory forms**
28

29 To accommodate implementation of mandatory juvenile Judicial Council
30 forms:
31

32 (1) New and revised mandatory forms produced by computer, word-
33 processor printer, or similar process must be implemented within one
34 year of the effective date of the form. During that one-year period the
35 court may authorize the use of a legally accurate alternative form,
36 including any existing local form or the immediate prior version of the
37 Judicial Council form.
38

39 (2) A court may produce court orders in any form or format as long as:
40

41 (A) The document is substantively identical in numerical organization
42 and language to the mandatory juvenile Judicial Council form it
43 modifies;

1
2 (B) The order is an otherwise legally sufficient court order, as
3 provided in rule 1.31(g), concerning orders not on mandatory
4 forms; and

5
6 (C) The court sends written notice of its election to change the form
7 or format of the mandatory form to the Family and Juvenile Law
8 Advisory Committee and submits additional information reports
9 as requested by the committee.

10
11
12 **Rule 7.101.5. Electronic Generation of Mandatory Judicial Council Form**
13 **Orders**

14
15 **(a) Applicability**

16
17 This rule applies to the following Judicial Council mandatory form orders
18 used in proceedings under the Probate Code:

19
20 (1) Order for Probate (form DE-140);

21
22 (2) Order Prescribing Notice (form DE-200/GC-022);

23
24 (3) Spousal or Domestic Partner Property Order (form DE-226);

25
26 (4) Order Confirming Sale of Real Property (form DE-265/GC-065);

27
28 (5) Order Determining Succession to Real Property (form DE-310);

29
30 (6) Order Appointing Guardian ad Litem—Probate (form DE-351/GC-
31 101);

32
33 (7) Order Dispensing With Notice (form GC-021);

34
35 (8) Order Fixing Residence Outside the State of California (form GC-090);

36
37 (9) Order Appointing Temporary Guardian or Conservator (form GC-
38 140);

39
40 (10) Order Appointing Guardian of Minor (form GC-240);

- 1 (11) Order Terminating Guardianship (form GC-260);
2
3 (12) Order Appointing Court Investigator (form GC-330);
4
5 (13) Ex Parte Order Re Completion of Capacity Declaration—HIPAA
6 (Form GC-334);
7
8 (14) Order Appointing Probate Conservator (form GC-340); and
9
10 (15) Order Authorizing Conservator to Give Consent for Medical Treatment
11 (form GC-285).
12

13 **(b) Definitions**
14

- 15 (1) “CCMS” is the California Case Management System, a statewide
16 integrated software application for managing all case types in the
17 superior courts of this state.
18
19 (2) “Electronic generation of a court order” is the electronic generation by
20 a court of a Judicial Council form order listed in (a).
21

22 **(c) Modification of electronically generated court orders**
23

- 24 (1) Any court using CCMS for case management of proceedings under the
25 Probate Code may modify any of the Judicial Council mandatory form
26 court orders listed in (a) by generating the order electronically in a way
27 that includes in the order signed by the judicial officer only the party-
28 appearance and other preliminary information, findings, and orders
29 actually selected by the court.
30
31 (2) An electronically generated court order under this rule must express the
32 findings and orders selected by the court in substantially the same
33 language as the equivalent findings and orders in the Judicial Council
34 form order, and must provide substantially the same party-appearance
35 and other preliminary information provided in the form order.
36
37 (3) An electronically generated court order under this rule must have the
38 same general appearance as the Judicial Council form order, including
39 case name and number, court, and party captions, and footer material,
40 except that the order may contain fewer pages than the form order, and
41 may be designated in the footer as an electronically generated court
42 order rather than a mandatory form.
43

1 (4) The orders listed in (a) are mandatory forms for all purposes under rule
2 1.31, except as provided in this rule. An order listed in (a) prepared
3 and submitted to the court by a party or attorney for a party must be
4 prepared on the mandatory Judicial Council form.

5
6 (5) A court that elects to electronically generate court orders under this rule
7 may also use or require the use of the Judicial Council form orders
8 listed in (a) in any individual case or proceeding.

9
10 **(d) Notification to advisory committees**

11
12 Any court electing to electronically generate court orders under this rule
13 must send written notice of its election to do so to the Probate and Mental
14 Health and the Court Technology Advisory Committees and submit
15 additional informational reports as requested by either committee.

16
17 **(e) Expiration date**

18
19 Unless amended or reenacted by Judicial Council action effective after the
20 effective date of this rule, this rule is repealed effective January 1, 2012.